

## REMARKS/ARGUMENTS

### Summary of Rejection Over Prior Art

Claims 2-11, 13, 16-19, 21-30, and 35-39 have been rejected under 35 USC 103(a) as being obvious over Kiewit in view of August. Reconsideration and withdrawal of this rejection are respectfully requested in light of the following remarks.

### Patentability of claims over Kiewit and August

With respect to all the independent claims 2, 16, 21 and 36, the Examiner concedes that "Kiewit does not disclose the broadcast program is transmitted by the programming signal source in combination with a surveying code, and the stationary means further comprises third detecting means for detecting said surveying code and associating said surveying code with said identification signals." However, the Examiner contends that this gap is bridged by August. Issue is respectfully taken with the Examiner in this regard.

August discloses (see Abstract) the following:

"A system and method for monitoring media audience habits and for obtaining real time responses to survey queries posed to a user from a survey provider concerning programming experienced by the user. A media program identifier located in an environment containing a primary media receiving device identifies media programming experienced by the user on the primary device. An input unit also located in the environment containing the primary receiving device obtains user identification and user demographics information by receiving responses to specific queries from the user. Survey queries concerning programming experienced by the user are provided to the user on the input unit or the primary receiving device for responding thereto." (Emphasis added).

The Examiner contends that August "discloses a programming signal source in combination with a surveying code, and a stationary means for detecting said surveying code and associating said surveying code with said identification signals (paragraphs [0015], [0018]-[0023])."

The Examiner then reaches the following conclusion:

"Therefore, it would have been obvious for one having ordinary skill in the art at the time the invention was made to adapt the teaching of August et al. to Kiewit to monitor what program the audience is watching or listening to (as suggested by August et al. paragraph [0009])."

In the present invention, the claimed "surveying code" is part of an encoded signal 2 generated by program signal source 1, e.g. the broadcasting station, along with the programming signal. See bottom of page 10 of the specification. The survey signal is used for identifying the program and/or the source of the broadcast. More details about the survey signal can be found on pages 5-6 of the present application and in US Patent Nos. 4,718,106, 5,457,807, and 5,630,203 issued to the present inventor.

It should be clear that despite the possibly misleading and unfortunate use in common of the word "survey" by both the present application and by August, the actual method and apparatus are quite different from each other. In the present invention, "survey" is applied to an electronic signal, such signal being a code, such code being combined with a programming signal, the combined signal being transmitted by the program signal source, the surveying code being detected, and the detected surveying code being associated with identification signals which identify audience members.

In contrast, August "presents survey questions which viewers are requested to answer" ([0018]). In particular, "each viewer may be presented with a script of survey questions, e.g. by displaying them on the video display device 60 or on a small display 12 on device 10.

Alternatively, voice processing or recorded speech can present the questions(s) of the survey audibly through a speaker located in device 10 and/or through a speaker in the video receiving device 60." (August par. [0018]).

"The responses to the survey questions may be used to establish viewer demographics or a profile of each viewer, such as the viewer's age, sex, preferred times and days of the week for watching television, etc." (August par. [0020])

"Information entered by viewers in response to the survey questions may be stored for access by the survey services provider 84. Such information may be accessed by the survey services provider by identifying a viewer from a corresponding user address, e.g., the user's telephone number, by utilizing caller identification techniques. For example, if input device 10 conveys viewer query responses to the survey provider via a telephone network, when such conveyance occurs the viewer's telephone number may be identified by the survey provider." (August par. [0021])

Thus, it is clear that in August the "survey" is not used for identifying the program and/or the source of the broadcast. Moreover, it is clear that in August the "survey" is not a coded electronic signal, nor is such code combined with a programming signal, the combined signal being transmitted by the program signal source for detection at the receiver (e.g. the TV). Moreover, there is no detected surveying code which is associated with identification signals that identify audience members.

Thus, it is indisputable that the claimed "surveying signal" of the present invention is completely different from the "survey" performed by August.

teaching of August et al. to Kiewit to monitor what program the audience is watching or listening to."

Kiewit is interested in knowing who is in the audience. As the Examiner states at the top of page 3 of the Office Action, "Kiewit (figure 1) discloses an apparatus (10) for identifying members of an audience tuned to a program broadcast by a programming signal source ..."

The "survey" feature of August is also aimed at determining who is in the audience. Thus, how can a combination of Kiewit with the "survey" feature of August be useful? Why would anyone do so? It seems that one or the other of these techniques would be selected, i.e. either the identification technique disclosed in Kiewit which relies upon transmitter devices 12 worn by individuals and which transmits to transceiver 14 a unique identification code (see col. 1, lines 25-50 of Kiewit), or the manual input of survey responses as disclosed in August (see par. [0013]).

It is respectfully submitted that there is no technical or operational reason to combine these references in the manner suggested by the Examiner. Moreover, it is illogical to do so. Consequently, the requisite motive necessary to support an obviousness rejection is completely lacking.

Each of independent claims 2, 16, 21 and 36 is allowable for reasons presented above.

The remaining pending claims are all dependent claims. Each claim is allowable along with the independent claim from which it depends. In addition, each of the dependent claims includes features which serve to even more clearly distinguish the present invention over the applied references.

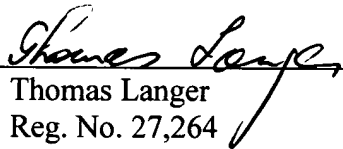
CONCLUSION

Based on all of the above, it is respectfully submitted that the present application is now in proper condition for allowance. Prompt and favorable action to this effect is respectfully solicited.

Should the Examiner have any comments, questions, suggestions or objections, he is invited to telephone the undersigned in order to facilitate reaching a resolution of any such outstanding matters.

It is believed that no fees or charges are required at this time in connection with the present application. However, if any fees or charges are required at this time, they may be charged to our Patent and Trademark Office Deposit Account No. 03-2412.

Respectfully submitted,  
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